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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,312	07/08/2003	Greg Brannstrom	12888-2	1867
7590	01/11/2005		EXAMINER	
James M. Duncan Klein, DeNatale, Goldner, etc. P.O. Box 111721 Bakersfield, CA 93389-1172			TORRES, ALICIA M	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,312	BRANNSTROM, GREG	
	Examiner Alicia M Torres	Art Unit 3671	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
Period for Reply			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.			
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 			
Status			
<p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>19 October 2004</u>.</p> <p>2a)<input checked="" type="checkbox"/> This action is FINAL. 2b)<input type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>			
Disposition of Claims			
<p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-27</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input checked="" type="checkbox"/> Claim(s) <u>13-27</u> is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-3 and 6-8</u> is/are rejected.</p> <p>7)<input checked="" type="checkbox"/> Claim(s) <u>4, 5 and 9-12</u> is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>			
Application Papers			
<p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input type="checkbox"/> The drawing(s) filed on _____ is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>			
Priority under 35 U.S.C. § 119			
<p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <p>1.<input type="checkbox"/> Certified copies of the priority documents have been received.</p> <p>2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p> <p>3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>			
<p>* See the attached detailed Office action for a list of the certified copies not received.</p>			
Attachment(s)			
<p>1)<input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.</p>		<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date _____.</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____.</p>	

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cetrulo, Jr., hereafter Cetrulo, in view of Hobbs.

3. In regards to claim 1, Cetrulo discloses a harvester for vine crops, such as tomatoes, wherein the vines are severed near ground level and removed from the ground with severing means (115), where the harvester has a wheel-mounted frame having a forward end, a rear end, a right side, a left side and a center, means for moving the harvester forwardly in a field, pickup means (74) adjacent the forward end for picking up crops and attached vines from the field and carrying the crops and vines reawardly and upwardly, and separating means (111, 112) for separating crops from the vines, an improvement in the pickup means (74) comprising:

A plurality of ground-engaging conveyors (100) extending from the forward end of the harvester (10), each conveyor (100) having a bottom end and a top end, a cutter (115) attached at the bottom end.

However, Cetrulo fails to disclose a central conveyor and an outrigger conveyor, the central conveyor and outrigger conveyor, the outrigger conveyor pivotally attached to the central conveyor such that the outrigger conveyor may be pivoted from a first position with the outrigger conveyor in the same relative position as the central conveyor, to a second position with the outrigger conveyor at approximately a right angle to the central conveyor.

Hobbs discloses a similar vine conveyor including a central conveyor (B) and an outrigger conveyor (A), the central conveyor (B) and outrigger conveyor (A), the outrigger conveyor (A) pivotally attached to the central conveyor (B) such that the outrigger conveyor (A) may be pivoted from a first position with the outrigger conveyor (A) in the same relative position as the central conveyor (B), to a second position with the outrigger conveyor (A) at approximately a right angle to the central conveyor (B).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the folding conveyor of Hobbs on the harvester of Cetrulo in order to move the conveyors to an inoperative position for storage and transportation.

4. In regards to claim 6, Cetrulo discloses a harvester (10) for vine crops, such as tomatoes, wherein the vines are severed near ground level and removed from the ground with severing means (115), where the harvester (10) has a wheel-mounted frame having a forward end, a rear end, a right side, a left side and a center, means for moving the harvester forwardly in a field, pickup means (100) adjacent the forward end for picking up crops and attached vines from the field and carrying the crops and vines rearwardly and upwardly, and separating means (111, 112) for separating crops from the vines, an improvement in the pickup means comprising: A plurality of ground-engaging conveyors (100) comprising a central conveyor extending from the forward end of the harvester, each conveyor (100) having a bottom end and a top end, a cutter (115) attached at the bottom end.

However, Cetrulo fails to disclose a right-side outrigger conveyor, and a left-side outrigger conveyor, the right-side outrigger conveyor extending from the forward end of the

harvester, each conveyor having a bottom end and a top end, the right-side outrigger conveyor pivotally attached to the central conveyor such that the right-side outrigger conveyor may be pivoted from a first position with the right-side outrigger conveyor in the same relative position as the central conveyor, to a second position with the right-side outrigger conveyor at approximately a right angle to the central conveyor, and the left-side outrigger conveyor pivotally attached to the central conveyors such that the left-side outrigger conveyor may be pivoted from a first position with the left-side outrigger conveyor in the same relative position as the central conveyor, to a second position with the left-side outrigger conveyor at approximately a right angle to the central conveyor.

Hobbs discloses a similar vine conveyor including a right-side outrigger conveyor (A), and a left-side outrigger conveyor (C), the right-side outrigger conveyor (A), the right-side outrigger conveyor (A) pivotally attached to the central conveyor (B) such that the right-side outrigger conveyor (A) may be pivoted from a first position with the right-side outrigger conveyor (A) in the same relative position as the central conveyor (B), to a second position with the right-side outrigger conveyor (A) at approximately a right angle to the central conveyor (B), and the left-side outrigger conveyor (C) pivotally attached to the central conveyor (B) such that the left-side outrigger conveyor (C) may be pivoted from a first position with the left-side outrigger conveyor (C) in the same relative position as the central conveyor (B), to a second position with the left-side outrigger conveyor (C) at approximately a right angle to the central conveyor (B).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the folding conveyor of Hobbs on the harvester of Cetrulo in order to move the conveyors to an inoperative position for storage and transportation.

5. Claims 2, 3, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cetrulo and Hobbs as applied to claims 1 and 6 above, and further in view of Gilbert.

Cetrulo further discloses wherein each conveyor comprises a drive shaft at the top end, as per claims 2 and 7, and a hydraulic motor coupled to the drive shaft, as per claims 3 and 8.

However, the combination fails to disclose rods connected by a belt at each end of the rods.

Gilbert discloses a similar harvester including rods (unnumbered) connected by a belt at each end of the rods.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the rods of Gilbert on the harvester of Cetrulo and Hobbs in order to aid in lifting.

Response to Arguments

6. In response to applicant's argument that regarding claims 1 and 6, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references

would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

7. Furthermore, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

8. In this case, it is not the explicit structure of Hobbs and Cetrulo, Jr. that must be physically combined, it is instead the teaching of Hobbs that it is known in the art to provide flanking conveyor portions on a harvester that is applied to the device of Cetrulo, Jr.

Allowable Subject Matter

9. Claims 4, 5 and 9-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-27 are allowed.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

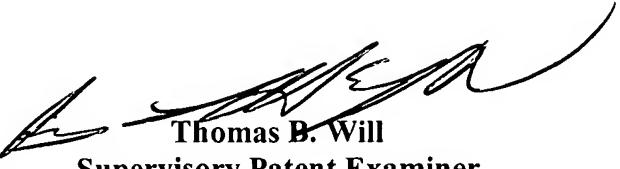
Art Unit: 3671

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
January 7, 2005